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May 26, 2015

**Via Electronic Filing**

Hon. Steven C. Mannion, U.S.M.J.  
United States District Court  
M.L. King, Jr. Federal Bldg. and U.S. Courthouse, Room 3053  
50 Walnut Street  
Newark, New Jersey 07101

Re: City of Jersey City v. Port Authority of New York  
and New Jersey, *et al.*  
Case Number: 2:14-cv-03286 (SDW) (SCM)  
Our File No.: 14206

Dear Judge Mannion:

We represent The Port Authority of New York and New Jersey and The Port Authority Trans-Hudson Corporation (collectively "Port Authority"). Pursuant to Your Honor's March 23, 2015 Amended Scheduling Order ("Amended Scheduling Order") (ECF No. 38), we write on behalf of all parties to provide a report concerning the status of discovery and to itemize issues that the parties anticipate will need to be discussed during the discovery conference call scheduled with Your Honor on June 3, 2015 at 10:30 a.m.

Pursuant to the Amended Scheduling Order, the parties have (i) exchanged written responses to initial interrogatories, requests for production of documents and requests for admissions, (ii) negotiated an Electronically Stored Information ("ESI") Protocol governing the identification, collection, review and production of ESI and (iii) will produce hard copy documents on May 28, 2015. Thus, the parties will be in compliance with the Amended Scheduling Order prior to the June 3rd conference.

We are also pleased to report that the parties are in compliance with Judge Wigenton's March 18, 2015 Order (ECF No. 37) extending the time for plaintiff to amend Count Seven and Count Nine of the Complaint and setting a schedule for the Port Authority to file an Answer or a Motion to Dismiss the Amended Counts. Plaintiff filed an Amended

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Complaint on April 1, 2015. The Port Authority filed a *Fed.R.Civ.P.* 12(b)(6) Motion to Dismiss Counts Seven and Nine of the Amended Complaint on May 1, 2015. Plaintiff's opposition is due to be filed on June 1, 2015 and the Port Authority's reply is due on June 19, 2015.

The parties anticipate that the following issues will need to be discussed during the discovery conference call.

1. The ESI Protocol and Production of ESI.

Pursuant to the ESI Protocol, on June 3<sup>rd</sup>, the parties will identify and disclose all custodians reasonably believed to control or possess ESI potentially relevant to this action. On or before June 18<sup>th</sup>, the parties are charged with agreeing to search terms and date ranges which are intended to limit the scope of custodian ESI that will be reviewed for potential production. The Protocol permits the parties to identify "Priority Custodians" that are reasonably believed to be more relevant to this action than other identified custodians. If the parties agree that Priority Custodians exist, their ESI will be reviewed first and other custodian ESI may be reviewed thereafter if requested by a party. The parties do not currently anticipate the need for additional time to identify custodians or Priority Custodians or to reach agreement on search terms.<sup>1</sup> If search terms are agreed on June 18<sup>th</sup>, the Protocol requires the parties to meet and confer on or before July 2, 2015 to set a deadline for the production of ESI.

The ESI Protocol is intended to result in an efficient and cost-effective exchange of information consistent with the Rules. Nonetheless, the parties anticipate that a large amount of ESI will need to be processed and reviewed in this litigation. Thus, the parties respectfully submit that a significant period of time will be required to review, process and produce ESI and to prepare logs relating to ESI withheld on the basis of privilege. While the parties will be in a better position to gauge the time required for ESI production after agreement to search terms and potential Priority Custodians, the parties currently believe that production of ESI can be completed within 120 days of agreement on search terms. The parties will be prepared to further discuss these issues with Your Honor during the June 3, 2015 conference call.

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<sup>1</sup> If, however, the parties are unable to agree on appropriate search terms, the "Discovery Dispute" procedure set forth in paragraph 5 of the November 17, 2014 Initial Scheduling Order (ECF No. 16) will be followed.

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2. Remaining Deadlines.

In light of the time required for processing, review and production of ESI, deadlines associated with fact discovery, expert reports and expert discovery will need to be revised to account for the completion of ESI. We respectfully request that the Court schedule a conference to coincide with completion of the parties' ESI productions to set new deadlines for these items.

We look forward to speaking with Your Honor on June 3, 2015 at 10:30 a.m. Consistent with prior practice in this matter, counsel for plaintiff shall initiate the call.

If Your Honor has any questions, please do not hesitate to contact us.

Respectfully submitted

DUGHI, HEWIT & DOMALEWSKI

s/Craig A. Domalewski

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cc: All Counsel of Record Via ECF